to be a requisite of due process of law, and that a trial and conviction was due process so long as it was in accordance with the law of the state, and so long as that law was not of an arbitrary or discriminating character.

On both points Mr. Justice Harlan delivered a vigorous protest. But as a logical conclusion of law, the opinion of the majority is undoubtedly correct; and from the standpoint of expediency there seems to be no danger in intrusting to the individual states the power to regulate the form of their trials. The decision is, moreover, in conformity with previous decisions of the state courts on the precise point, *In re McKee*, 57 Pac. Rep. 23 (Utah); and of the United States Supreme Court on analogous questions, *Walker* v. *Sauvinet*, 92 U. S. 90; *Missouri* v. *Lewis*, 101 U. S. 22. See 10 HARVARD LAW REVIEW, 440. The present decision was especially anticipated in *Hurtado* v. *People of California*, 110 U. S. 516, which decided that an indictment by a grand jury for a state offence was not constitutionally necessary, and further pointed out that the result reached in the principal case must logically follow.

As to the consequences likely to ensue from this decision, it is not probable that state legislatures have felt constrained in their legislation in anticipation of a contrary result, and therefore any immediate changes in the methods of trial in the various states need not be expected; but the decision certainly does bring to the attention of the state legislatures their powers over these matters, and in view of the discussion of late years as to the advisability of jury trials, it is possible that some novel legislation may result.

SALE OF THE PARTNERSHIP ASSETS BY LESS THAN ALL THE SURVIVING PARTNERS. — The nature of a partner's interest in the partnership assets is very neatly brought out in a recent Australian case. *Rees* v. *Duncan*, 21 Australian Law Times, 205 (Victoria). One of four partners died, and the partnership was thereby dissolved. Two of the surviving partners and the representatives of the deceased partner sold "all their right, title, and interest" in the partnership assets to the plaintiff. In a suit against a stranger for the conversion of the assets, the court held that the legal title to the partnership assets was vested in the surviving partners by survivorship as joint tenants, in trust for the firm, and that no legal interest was transferred to the plaintiff. Consequently the plaintiff failed in his suit.

The decision seems clearly right. The position of a partner as regards the partnership assets is wholly anomalous. The common law conception is that the legal property is in the partners as joint tenants. Yet so far is the mercantile idea that partnership is an entity recognized, that a partner cannot transfer his interest in specific property. Parsons' Partnership, 4th ed. § 178; *Nichol* v. *Stewart*, 36 Ark. 612. Though in the principal case the partnership was dissolved by the death of a partner, the partnership still subsisted in equity and in mercantile contemplation as a body which owns property and owes debts. Its existence could not be terminated until the business was wound up and final distribution made, and the survivors therefore have no more right to transfer property for other than partnership purposes after the dissolution than before. *Strauss* v. *Frederick*, 91 N. C. 121.

The principal case rightly held that the deceased partner's interest passed on his death to the surviving partners, disregarding the sporadic

decision of *Buckley* v. *Barber*, 6 Ex. 164, which, acting on the principle that *jus accrescendi inter mercatores locum non habet*, held that as regards chattels belonging to the firm there is no survivorship. This case made a useless and unsound distinction between land, debts, and chattels. It seems never to have been followed in the United States, and in England has been taken care of by statute. It is further interesting to note that the court repudiates the much discussed decision of *Knox* v. *Gye*, L. R. 5 E. & I. 656, that there is no fiduciary relation between the surviving partners and the executor of a deceased partner, and in accord with an earlier Victorian case, *In re Falk*, 18 V. L. R. 589, adopts the dissenting opinion of Lord Hatherley, that the survivors hold the assets as joint-tenants in trust for the firm. While to-day this matter has been said to be largely a question of terminology, it has certainly caused a large amount of confusion in the courts, — many following Lord Westbury, in *Knox* v. *Gye*, *supra*, that there is no fiduciary relation whatever, others holding the relation to be purely that of trustee and cestui, *Hill* v. *Draper*, 54 Ark. 395, while others again say the position of the surviving partners is anomalous, "not exactly and wholly trustee and yet not a full owner of the assets." *Russell* v. *McCall*, 141 N. Y. 437. It may well be doubted, notwithstanding the great authority of Lord Westbury, whether the view of the principal case is not the better; for the relation in its essential attributes would seem to be fiduciary.

Lumping of Orders by an Agent. — The question whether an agent, having received orders from various principals, can, by joining them and entering into a contract with a third person for the whole amount, bring the third person into contractual relationship with each of the principals, is a question of thoroughly practical application. In the recent case of *Beckhusen and Gibbs* v. *Hamblet*, 16 Times L. R. 278, it was answered in the negative. The defendant had given a broker orders to purchase two hundred and ten shares of stock. Having an order for one hundred and fifty shares of the same stock from another customer, the broker lumped the orders and purchased three hundred and sixty shares from the plaintiffs. The broker failing, the plaintiffs learned from him the names of his principals, and then sued the defendant for loss incurred with regard to his proportion of the stock. The court held that no contractual relationship had been established between the plaintiffs and the defendant, the contract with the plaintiffs being solely with the broker and not with either of his customers.

If the broker had made two separate contracts for the precise number of shares ordered by each customer, each would have been liable to the seller on his own contract, whether the broker disclosed his principals or not. And at first sight it seems odd to say that when the broker does the very common act of lumping the two orders, the person with whom he contracts loses all right to proceed against the customers. Yet on closer examination the decision in the principal case is seen to reach the only logical result. A contrary view would lead to one of the following conclusions: either that the principals had incurred a liability jointly or severally, or jointly and severally; or that a contract exists with each principal for his proportionate share. The first view is on its face untrue, for the principals had no relations with each other. The second is equally untenable, for the contract made by the agent was one entire